

OLC RECORD COPY

Prop. Leg.
100-083613

OFFICE OF DIRECTOR OF CENTRAL INTELLIGENCE

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WASHINGTON, D.C. 20505

Telephone:

3 August 1978

TO: Mr. Robert E. Carlstrom
Legislative Reference Division
Office of Management and Budget

Bob:

Enclosed you will find our several
proposed amendments to S. 3314.

I believe that they are self-explanatory;
however, should you have questions please
feel free to contact this office. We appreciate
your continued attention to this matter.

Legislative Counsel

Enclosure

FORM 4-75 1533C

(40)

Section 7806(d): All regulations issued under this section shall be subject to the public comment provisions of Section 553 of title 5, notwithstanding subsection (a) of section 553, United States Code and subject to judicial review under Chapter 7 of title 5. The court's review shall be held in camera for matters specifically protected from disclosure by statute, by Executive Order relating to the national security, national defense, or foreign affairs, or in the court's own discretion if it determines that in camera review is necessary.

INSERT FOREGOING IN LIEU OF CURRENT SECTION 7806(d).

Section 7803(c): After the word witnesses on page 16, line 13 insert...

, however this discretion shall not be construed to provide access by unauthorized persons to information specifically protected from disclosure by statute, or by Executive Order relating to the national security, national defense, or foreign affairs.

Section 7: New Section (e)(1): Where a tort suit for injury or loss of property or personal injury or death resulting from the negligent or wrongful act or omission of any officer or employee of the Government, or a tort suit arising from the violation of the Constitution of the United States, is commenced against an individual who is no longer an employee of the Government or who is an appointee of the President as defined in chapter 78 of title 5, upon certification of the Attorney General at any time before trial that such defendant was acting within the scope of his office or employment or, with regard to torts arising under the Constitution of the United States, that such defendant was acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct, at the time of the incident out of which the suit arose, the Attorney General shall provide legal representation for such defendant employee.

(e)(2): Upon certification by the Attorney General that a defendant who is no longer an employee of the government or who is an appointee of the President was acting within the scope of his office or employment or, with regard to torts arising under the Constitution of the United States, that such defendant was acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct, at the time of the incident out of which the suit arose, any such civil action or proceeding

commenced in a State court shall be removed, without bond, at any time before trial, by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending. The Certification of the Attorney General shall conclusively establish that a defendant who is no longer an employee of the Government or who is an appointee of the President was acting within the scope of his office or employment and, with regard to torts arising under the Constitution of the United States, was acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct for purposes of such initial removal. Should a district court of the United States determine on a hearing on a motion to remand held before trial on the merits that the defendant was not acting within the scope of his office or employment and, with regard to torts arising under the Constitution of the United States, was not acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct the case shall be remanded to the State court in which it was initially filed.

REDESIGNATE SUBSECTION (e) AS SUBSECTION (f) AND ADD THE ABOVE LANGUAGE AS NEW SUBSECTION (e).